

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-214309

DATE: February 22, 1984

MATTER OF: Devault Equipment Company, Inc.

DIGEST:

Protest which in essence is based on alleged restrictive specification that was apparent on the face of the invitation for bids is untimely when not filed prior to bid opening.

Devault Equipment Company, Inc. protests the rejection of its low bid as nonresponsive by the General Services Administration under invitation for bids (IFB) No. 10PN-NTD-5513. Devault admits that its bid was nonresponsive, but contends that the specification, for a self-propelled track vehicle mounted crane, was unduly restrictive of competition and that the vehicle it proposed would meet all requirements except one.

The protest is dismissed.

The specification required the vehicle's drive system be "the manufacturer's standard front-drive of proven dependability" and stated that the front drive was required to "facilitate the rear-mounting of a crane (turret)". In its bid, Devault took exception to this requirement because, it contended, its vehicle with rear-wheel drive could accommodate a crane as required and was a better balanced machine which was easier to maintain. The agency rejected this bid on grounds that it took exception to a specified requirement essential to the user's actual needs and operating conditions. Devault now asks that a new competition be held.

In effect, Devault is complaining about the specifications and now seeks an opportunity to submit a bid under revised specifications. Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1), require that protests based

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upon alleged IFB improprieties which are apparent prior to bid opening be filed either with the contracting agency or this Office before bid opening. Sandia Die & Cartridge, B-211555, September 14, 1983, 83-2 CPD 324. Bid opening occurred on October 29, 1983, yet no protest was filed with either GSA or this Office until January 1984. Therefore, Devault's protest will not be considered on its merits.

The protest is dismissed.

J. H. Barclay Jr.
for Harry R. Van Cleve
Acting General Counsel